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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GREENFIELD, ET AL.,

Plaintiffs,

vs.

BRENNER, ET AL.,

Defendants.

NO. CV-05-5120-LRS

**[PROPOSED] ORDER QUASHING
SERVICE ON BENTON COUNTY;
DISMISSING BENTON COUNTY,
THE BENTON CO. PLANNING/
BUILDING DEPT. AND
DEFENDANTS MILLER,
MARDEN, VINING, STILWILL,
BROWN AND BRENNER IN
THEIR OFFICIAL
CAPACITIES; AND
DISMISSING PLAINTIFFS'
SECOND, THIRD AND
ELEVENTH CAUSES OF ACTION
AGAINST ALL COUNTY
DEFENDANTS**

This matter came before the Court on a motion pursuant to Civ.R. 12(b)(5) and (6) by Benton County, its Planning/Building Department, defendants Andy Miller and Terry Marden in their official capacities, and defendants Elisa Vining, Craig Stilwill, Steve Brown and Gary Brenner in both their official and personal capacities. The relief requested by this motion was as follows: (1) for an order quashing service on Benton County; (2) dismissing Benton County due to plaintiffs' failure to properly serve it; (3) dismissing plaintiff's complaint for failure to state a claim for relief against defendant Benton County Planning/Building Department and defendants Miller, Marden, Brown, Stilwill, Vining and Brenner

1 in their official capacities; (4) dismissing for failure to state
2 a claim plaintiffs' Second, Third and Eleventh Claims against the
3 above referenced defendants and against defendants Vining,
4 Stilwill, Brown and Brenner in their individual capacities; and (5)
5 an order that plaintiffs comply with LR 3.2 and file and serve a
6 RICO Case Statement within ten days of service upon each remaining
7 defendant and that plaintiffs' Twelfth Claim be dismissed to the
8 extent plaintiffs fail to comply with and LR 3.2 and this order.

9 This motion was determined without oral argument. The Court
10 considered the pleadings filed in this action, plaintiffs' return
11 of service upon Benton County on file with the Court and the
12 Memorandum in Support filed in connection herewith.

13 Based on the above, the Court finds that service has not been
14 properly effected against Benton County; that the Complaint fails
15 to state a claim against defendant Benton County Planning/Building
16 Department or defendants Miller, Marden, Brown, Vining, Stilwill
17 and Brenner in their official capacities; that the Second, Third
18 and Eleventh Claims set forth in the Complaint fail to state claims
19 for relief against any of the defendants identified herein; and
20 that plaintiffs have failed to comply with LR 3.2.

21 Based on the above findings, it is therefore Ordered:

22 1. The purported service upon Benton County by Mary Sluyter
23 on December 28, 2005, is hereby quashed as ineffective, and that
24 plaintiffs' Complaint against Benton County is dismissed.

25 2. The motion to dismiss under Civ.R. 12(b)(6) by Benton
26 County Planning/Building Department is hereby granted and that
27 defendant is dismissed with prejudice.

28 3. The Civ.R. 12(b)(6) motion to dismiss the following

1 defendants sued in their official capacity is granted and they are
2 dismissed with prejudice: Andy Miller, Terry Marden, Elisa Vining,
3 Craig Stilwill, Steve Brown and Gary Brenner.

4 4. The Civ.R. 12(b)(6) motion to dismiss plaintiffs' Second,
5 Third, and Eleventh Claims against defendant Benton County, its
6 Planning Department, Andy Miller and Terry Marden in their official
7 capacities, and Elisa Vining, Steve Brown, Craig Stilwill, and Gary
8 Brenner in their official and personal capacities is hereby granted
9 and such claims are hereby dismissed with prejudice.

10 5. Plaintiffs are hereby ordered to file and serve on each
11 remaining defendant a RICO Case Statement in accordance with LR 3.2
12 by the later of: (a) ten days from the date of this Order; or (b)
13 ten days from the date of service of the Summons and Complaint on
14 a defendant, and that failure to comply with this order shall
15 result in plaintiffs' Twelfth Claim being dismissed with prejudice
16 against each such defendant not properly served.

17 Dated this ____ day of _____, 2006.

18
19 _____
20 United States District Judge

21
22 **DECLARATION OF SERVICE**

23 I certify that I served, in the manner indicated below, a true
24 and correct copy of the foregoing document as follows:

25 Gerry Greenfield, Jr.
26 P.O. Box 6333
Kennewick, WA 99336

☒ U.S. Regular Mail, Postage Prepaid
☒ Legal Messenger
☒ Facsimile
☒ Overnight Express
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DATED this 18th day of January, 2006, at Kennewick, Washington.

S/Ryan K. Brown
RYAN K. BROWN